

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on Universal Service
Proposed Fourth Quarter 2004
Universal Service Contribution Factor

CC Docket No. 96-45

AT&T Petition for Declaratory Ruling
Regarding Enhanced Prepaid Card Services

WC Docket No. 03-133

**BELLSOUTH CORPORATION
COMMENTS IN SUPPORT OF WILTEL COMMUNICATIONS, LLC'S
EXPEDITED PETITION**

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries ("BellSouth"), hereby submits its comments in support of WilTel Communications, LLC's ("WilTel") expedited petition asking the Commission to reduce or adjust the proposed universal service contribution factor for the fourth quarter of 2004.¹ BellSouth agrees that the contribution factor proposed by the Wireline Competition Bureau in the September 16, 2004 *Public Notice*² is unlawful because it does not comply with Section 254's requirement that all providers of telecommunications services contribute to the universal service fund on an "equitable and nondiscriminatory" basis.³ Allowing providers such as AT&T to knowingly and explicitly avoid

¹ Expedited Petition to Reduce or Adjust the Proposed Fourth Quarter Contribution Factor, WilTel Communications, LLC (filed Sept. 22, 2004) ("WilTel Petition").

² *Proposed Fourth Quarter 2004 Universal Service Contribution Factor*, CC Docket No. 96-45, *Public Notice*, DA 04-2976 (rel. Sept. 16, 2004) ("*Public Notice*").

³ See 47 U.S.C. §§ 254(a)(4) and (d).

their universal service obligations by mischaracterizing their prepaid calling card services is discriminatory and imposes additional costs upon consumers. To ensure that individual consumers and carriers are not contributing more than their fair share to the universal service fund as mandated by the Act, the Commission should take the following actions requested by WilTel: (1) reject the proposed 8.9% contribution factor for fourth quarter 2004; (2) issue prior to September 30, 2004 a decision regarding the classification of AT&T's prepaid calling card services;⁴ (3) recalculate the fourth quarter contribution factor based upon that decision; and (4) take any additional enforcement or other actions necessary to ensure that all future contribution factors (including the factor for first quarter 2005) comply with Section 254.

I. THE PROPOSED CONTRIBUTION FACTOR FOR FOURTH QUARTER 2004 IS UNLAWFUL AND DISCRIMINATORY.

The proposed universal service contribution factor for the fourth quarter of 2004 is violative of Section 254 of the Communications Act of 1934, as amended. Sections 254(a) and (d) make clear that every telecommunications carrier that provides interstate telecommunications services must contribute to the universal service fund "on an equitable and nondiscriminatory basis."⁵ The willful evasion of universal service obligations by some carriers, such as AT&T, creates a discriminatory universal service contribution mechanism that violates the statute and harms both carriers and customers.

⁴ See *Pleading Cycle Established for AT&T Petition for Declaratory Ruling on Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133, *Public Notice*, DA 03-1896 (rel. June 5, 2003); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Services*, WC Docket No. 03-133, *Order*, DA 03-2188 (rel. July 2, 2003) (extending deadline for filing reply comments).

⁵ 47 U.S.C. §§ 254(a)(4) and (d).

The Commission calculates the quarterly contribution factor based upon the ratio of the projected costs of the various universal service support mechanisms and the total projected end-user interstate and international telecommunications revenues of all providers of telecommunications services (with the exception of *de minimis* carriers). An individual provider's universal service assessment, in turn, is based upon this contribution factor. When a provider such as AT&T explicitly admits that it is willfully not contributing to the universal service fund with respect to its prepaid calling card services (despite a clear obligation to do so),⁶ the universal service contribution factor becomes severely skewed thereby creating a discriminatory and inequitable mechanism.

A carrier's willful refusal to contribute to the universal service fund as mandated by Section 254 and the Commission's rules has a number of significant adverse consequences.⁷ First, the fund loses a source of revenue from providers unlawfully withholding universal service payments. Second, those providers that do comply with the law and meet their universal service obligations bear the sole financial responsibility for ensuring that the universal service fund is adequately funded. Third, these lawful contributors are placed at a competitive disadvantage in that "they pay disproportionate universal service fees and are unable to meet low market prices

⁶ In its Form 10-Q filed May 10, 2004, AT&T stated the following: "[B]ecause our prepaid card calls are offered as an enhanced services, we do not make Universal Service Fund (USF) contributions on revenue derived from these calls. Given that we cannot predict with certainty how the FCC will rule on our petition . . . the current classification of AT&T's enhanced prepaid card service has generated approximately \$215 million in access savings since the third quarter of 2002, and approximately \$140 million in USF contribution savings since the beginning of 1999, compared with the cost that would have been incurred by a basic prepaid card offering." AT&T Corp., Form 10-Q, Section 10 (filed May 10, 2004).

⁷ 47 U.S.C. §§ 254(a)(4) and (d).

set by the legally aggressive” providers such as AT&T.⁸ Finally, the customers of lawful contributors are disproportionately affected as they bear higher universal service costs than the customers of “non-contributors.”

In sum, because the proposed contribution factor is based upon improper revenue assumptions, the Commission should not allow it to go into effect. Approving the proposed factor would not only contravene the Act’s requirement that telecommunications providers contribute to the universal service fund on an “equitable and nondiscriminatory basis” but also constitute Commission acceptance of certain carriers’ willful non-compliance with its universal service rules. The Commission should not sanction such an outcome.

II. THE COMMISSION SHOULD REJECT THE PROPOSED FACTOR AND PROMPTLY RENDER A DECISION IN THE PENDING AT&T PREPAID CALLING CARD SERVICES PROCEEDING.

Rather than continue the discrimination that has occurred to date by approving the proposed contribution factor, the Commission should reject this factor and resolve the outstanding proceeding involving AT&T’s prepaid calling card services prior to September 30, 2004. The Commission then should adjust the fourth quarter contribution factor taking into account its decision in the prepaid calling card proceeding. As WilTel points out, the prepaid calling card docket has been open for more than a year and the record is complete.⁹ There is no reason to delay action any further. Indeed, Section 254 mandates immediate corrective action by the Commission to end the current discrimination and harm to consumers.

⁸ WilTel Petition at 4.

⁹ WilTel Petition at 5.

BellSouth agrees that, if the Commission finds that AT&T is required to make universal service contributions for its prepaid calling card services, it should require AT&T to remit immediately to the Universal Service Administrative Company the \$140-\$150 million AT&T has admitted to withholding.¹⁰ The end result is that savings would flow to consumers.

In the alternative, if the Commission finds that AT&T is not obligated to contribute to the universal service fund for its prepaid calling card services, that same rule must apply to all other providers of similar services.¹¹ Further, the Commission would need to recalculate the contribution factor taking into account refunds owed to similarly situated providers as well as any reductions in projected revenues. If the Commission is unable to make these adjustments to accommodate the contribution factor for the fourth quarter, at a minimum, it should advise the Wireline Competition Bureau to include these changes when developing the factor for first quarter 2005.

III. CONCLUSION

BellSouth fully supports WilTel's request for expedited action to ensure that individual consumers and carriers are not contributing more than their fair share to the universal service fund as mandated by the Act. Accordingly, BellSouth urges the Commission to take the following actions as requested by WilTel: (1) reject the proposed 8.9% contribution factor for fourth quarter 2004; (2) issue prior to September 30, 2004 a decision regarding the regulatory classification of AT&T's prepaid calling card services; (3) recalculate the fourth quarter

¹⁰ WilTel Petition at 5.


¹¹ WilTel Petition at 6.

contribution factor based upon that decision; and (4) take any additional enforcement or other actions necessary to ensure that all future contributions comply with Section 254.

Respectfully submitted,

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September 28, 2004

CERTIFICATE OF SERVICE

I do hereby certify that I have this 28th day of September 2004 served the following parties to this action with a copy of the foregoing **COMMENTS** by electronic filing, electronic mail and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.



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